

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

AMERICAN MANUFACTURERS MUTUAL
INSURANCE COMPANY,

Plaintiff,

vs.

TOWN OF NORTH BROOKFIELD,
Defendant.

Civil Action No. 03-40266-CBS

AFFIDAVIT OF RICHARD P. ANASTASIO IN SUPPORT OF PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT ON COUNT II OF DEFENDANT'S COUNTERCLAIM

I, Richard P. Anastasio, have personal knowledge of the following, except where stated to be upon information and belief. I make this affidavit in support of Plaintiff's Motion for Summary Judgment On Count II of Defendant's Counterclaim. Capitalized terms that I have not defined herein will have the meanings ascribed to them in AMMIC's Memorandum of Law in Support of AMMIC's Motion for Summary Judgment on Count II of Defendant's Counterclaim.

1. I am a registered professional engineer and a principal in the firm of GREYHAWK North America, LLC. A copy of my current biography, in summary form, is attached hereto as **Exhibit 1**.

2. I have been associated with many facets of the construction industry for over 38 years. I have been an entrepreneur and have held titles with various employers as company President, Manager of New Business Development, Manager of Projects, Contract Administrator, Manager of Cost Control and Estimating, Construction Manager, and Senior Design Engineer. At GREYHAWK, my duties focus on construction matters such as, contract administration, construction management, cost control, design issues, construction claims and surety work. I have been involved with the design or construction of a significant variety of projects, including chemical and food processing plants, power plant expansions and

rehabilitations, co-generation facilities, pollution control facilities, refinery projects, material handling facilities, transportation systems, schools, hospitals, housing projects, marine construction, hotels and research facilities.

3. AMMIC engaged me and my firm, GREYHAWK, North America, LLC, in or about February 2003 to provide engineering, construction and claims expertise in AMMIC's investigation of Sciaba Contracting and its performance on Sciaba Contracting construction projects bonded by AMMIC ("Bonded Projects").

4. In the latter part of March, 2003, I traveled from New York to the North Brookfield Project and other Bonded Project sites with Stephen J. Beatty ("Beatty") to conduct investigative meetings as to Sciaba's performance.

5. Upon North Brookfield's request, I also attended an on-site Project meeting on May 21, 2003.

6. Throughout June and July 2003 I communicated regularly with Mr. Beatty regarding particulars of the Project as they were discovered and learned in our investigation.

7. On or about July 21, 2003, I provided AMMIC with a preliminary analysis and status-assessment of the North Brookfield Project, including a projected cost to complete, the status of payment bond claims, and other data. Attached hereto as Exhibit 2 is a true and accurate copy of the preliminary analysis I provided to Mr. Beatty on July 21, 2003.

8. By July 23, 2003, and in connection with AMMIC's investigation of the Project, I had *already* begun the process of obtaining agreements from subcontractors on the North Brookfield Project to ratify their subcontracts and commit to returning to work under a replacement contractor.

9. By July 23, 2003 I had also traveled to the North Brookfield Project on or about the following dates: May 13 and 21, 2003; and June 5, 12, and 18, 2003. During the visits of June 5, 12, and 18, I met with representatives from the Town and/or Dore & Whittier, among others. I began requesting documents from Dore & Whittier and/or the Town on or about June 2, 2003. I also met with the Town's School Building Committee on August 6, 2003 to explain the status of obtaining a completion contractor, what issues existed, and what steps would be required going forward.

10. I developed a Request for Expression of Interest ("REI") that was distributed to at least twelve (12) potential completion contractors on or about August 13, 2003. Attached hereto as Exhibit 3 is a true and accurate copy of an email from me to, among others, Thomas W. McEnaney, attorney for the Town of North Brookfield, regarding the REI.

11. On or about August 20, 2003, I was at the North Brookfield Project and distributed the final Request for Proposal ("RFP") to nine (9) potential completion contractors.

12. The Town and its architect, Dore & Whittier, approved the list of contractors to receive the RFP.

13. Interested contractors submitted bids on September 8, 2003 – and all were higher than expected.

14. After receiving the bids on September 8, 2003, I conducted follow-up interviews and analysis with the bidders in order to determine why all bids exceeded GREYHAWK's estimated cost-to-complete. Then on October 8, 2003 I solicited the submission of best and final bids.

15. GREYHAWK continued its analysis and consultation to AMMIC after receipt of the best and final bids on October 17, 2003 because the best and final bids were still higher than the original cost to complete, the first round of bids, and/or both.

16. Throughout the investigation and process of putting the Project out for re-bid, I never set any hard and fast “deadlines” but only communicated ideal timeframes for gaining certain milestones. The time required to investigate such a complex construction project varies from project to project. It would therefore be unreasonable to set hard “deadlines” as various facts and issues are often uncovered that can alter the desired timeline. Any “deadline” or target date for my investigation and the re-bidding process, if any, was imposed by me.

17. I am familiar with, and provided the information for, AMMIC's analysis of the amounts it determined it owed to North Brookfield under its performance bond, as set forth in the November 21, 2003 letter from Deborah S. Griffin, Esq. (attorney for AMMIC) to Thomas W. McEnaney, Esq. (attorney for the Town).

Signed under the penalties of perjury this _____ day of December, 2005.

/s/ Richard P. Anastasio

Richard P. Anastasio, P.E.

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